Trade Restrictions and Tariffs: Protecting Your Customers and Supply Chains

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Keeping up with the international tariffs and trade restrictions recently imposed by the United States can make business planning for companies operating in the United States difficult. In particular, the Trump administration continues to turn up the pressure on China and Chinese companies in response to Beijing's purported unfair trade practices. Congress also has targeted China and Chinese companies in a sustained and multi-faceted manner through various legislative proposals. Competitive carriers, equipment and software vendors, and other service providers must anticipate and prepare for the commercial impact of potential supply chain disruptions and regulatory uncertainty that may arise from these restrictions.

Making sense of the patchwork of trade restrictions on China and Chinese companies is important in order to discern how limitations on the cross-border flow of goods, software, and technology might impact your business. Companies that invest the time and resources to navigate the complex legal and regulatory landscape in order to understand the potential sources of supply chain disruption can develop tailored strategies to mitigate the attendant risks. In turn, this will help to ensure product and service availability for your customers—and ultimately protect your bottom line.

Recent and Pending Trade Restrictions and Tariffs

Although the range of trade restrictions and tariffs is diverse and constantly changing, there are several China-related measures that could create supply chain headaches for competitive carriers, equipment and software vendors, and other service providers ranging from potential bans on equipment from specified companies to product-specific tariffs on consumer items. The developments should be closely monitored and incorporated into company plans.

The Commerce Department has spent considerable time over a number of years investigating Chinese telecommunications equipment manufacturers, including ZTE and Huawei. The investigation led to a 2017 settlement with ZTE that included a suspended order effectively barring the company from using components and software in China that were exported from the United States. In April of this year, Commerce reversed the suspension, but the Trump administration provided ZTE a lifeline. It lifted the denial order in return for a hefty fine and changes to company management. Despite the President's relief, Congress still may have its say as it debates legislation to renew restrictions on ZTE to varying degrees.

In July, the Trump administration took a broad sweep at China and imposed a 25% tariff on \$34 billion worth of Chinese imports covering technology, medical devices, and industrial goods. Among the technology lines hardest hit by the new Section 301 tariffs are semiconductors and related products, which made up \$2.5 billion in imports from China in 2017, according to the Semiconductor Industry Association. The tariffs also cover parts for commonly purchased items such as disk drives used in servers and storage devices, as well as printer and copier components.

In addition to these two focus areas, Congress also is considering changes to the law which provides for reviews of certain foreign investment transactions that raise national security issues, driven largely by concerns about China’s strategic objectives with investments and critical technology acquisition. And, another measure that would create significant harm for competitive carriers is the FCC’s consideration of a rule that would block carriers from receiving funds from the \$8.5 billion Universal Service Fund if the company uses equipment anywhere in its network that is deemed to pose a threat to national security. This has far-reaching impacts on subsidized carriers.

Preparing for Supply Chain Disruptions

There are several strategies that could help a company address the potential for supply chain disruptions arising from these trade restrictions and tariffs.

First, the Office of the United States Trade Representative (USTR) announced a Section 301 tariff exclusion process under which U.S. companies have until October 9 to petition for specific products to be exempted from the duties. As it considers exclusion requests, USTR will weigh a number of factors, including whether the product in question is available from a source other than China and whether the new tariff would cause "severe economic harm" to the importer or other U.S. interests.

Second, given the acute focus on Chinese trade restrictions, companies that are overly reliant on products from China could consider diversifying by sourcing products from a range of different suppliers. Although developing a domestic U.S. supplier as a backup contingency can be the safest course, this is not always feasible, so geographical diversity more broadly is an option worth exploring.

Alternatively, businesses that have complex product assembly operations could consider shifting the location of the final product assembly to a country of origin that is not China. For example, if items from China would be subject to enhanced trade restrictions, businesses could pursue reduced costs and fewer supply chain disruptions with greater reliability if they are able to cluster production in a different region.

Finally, companies should consider stockpiling affected products that are likely to be targeted in future rounds of tariffs (but should do so with caution given the FCC proceeding regarding USF subsidies described above). On July 10, 2018, the White House announced it would assess 10% tariffs on an additional \$200 billion in Chinese goods. The new tariffs will not take effect for at least two months and hearings on the products are scheduled for late August 2018. The new tariffs hit numerous items likely to impact competitive carriers, equipment manufacturers, and vendors, including television cameras as well as components in telephones and flat panel displays.

Whether the answer is seeking exclusions from applicable tariffs, securing new suppliers, modifying your supply chain, or stockpiling items likely subject to future tariffs, companies should be prepared to monitor and adapt quickly to the changing landscape, and to engage the government to protect and promote the interests of your company and customers.